



Legal/Legislative Update

Presentation to

Tennessee Emergency Number Association Conference

September 16, 2008

State Legislation

- Appropriations
- Open Meetings
- Open Records

Conducting ECD Business: Open Meetings Requirements

- “The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.” Tenn. Code Ann. §8-44-101(a)
- The Act states that “[a]ll meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.” Tenn. Code Ann §8-44-102(a)
- The Act specifically prohibits secret votes. Tenn. Code Ann. §8-44-104
- Actions held to be in violation of the Open Meetings Act are “void and of no effect.” Once a court finds a governing body to be in violation of the Act, the court retains jurisdiction for a year and must require the governing body to report semiannually on its compliance with the Act.



Open Meetings Act

- Bottom line: The Open Meetings Act prohibits two or more members of any ECD Board of Directors from talking about Board business except in an open meeting.
- Committees: The Act prohibits private discussions about ECD business by two or more ECD Board members serving on a committee that has authority to make decisions for or recommendations to the ECD Board.

Open Meetings Act

- Don't talk about 911 Board business with another member of your Board
 - even one other member
 - except in a public meeting.

Conducting Business: Open Meetings Act

- The Open Meetings Act requires that the public be given adequate notice of each meeting. Tenn. Code Ann. §8-44-103

Conducting Business: Open Meetings Act

- What is adequate notice?
 - The notice, including where and when the meeting will be held, must be posted in locations where a member of the community could reasonably become aware of the meeting.
 - Courts have held that posting notice in city hall, the post office and a downtown bank was adequate.

Conducting Business: What is Adequate Notice

- The notice must be posted at a time sufficiently in advance of the actual meeting in order to give citizens both an opportunity to become aware of and to attend the meeting.
- Courts have found that 2 days notice is not sufficient

Conducting Business

What is Adequate Notice

- With Special Called Meetings, the contents of the notice must reasonably describe the purpose of the meeting or the action proposed to be taken.

Conducting Business

Open Meetings Requirements

- Minutes must be taken at every public meeting
- At a minimum, minutes must include:
 - A record of persons present
 - All motions, proposals and resolutions offered
 - The results of any votes taken
 - A record of individual votes taken in the event of roll call

Conducting Business Open Meetings Requirements

- Minutes must be promptly and fully recorded
- Minutes shall be open to public inspection

Open Records

- Public Chapter 1179, which went into effect July 1, 2008, makes significant changes regarding open records.
- Creates the Office of Open Records Counsel
- Section 1 states:
 - “All state, county and municipal records shall at all times, **during business hours**, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any **citizen of Tennessee** and those in charge of such records **shall not refuse** such right of inspection to any citizen, unless otherwise provided by state law.”

What Are Public Records?

- Tenn. Code Ann. § 10-7-503(a)(1): All documents, papers, letters, maps, books, photographs, microfilms, recordings, or other material, **regardless of physical form** or characteristics **made or received** pursuant to law or ordinance or in connection with the **transaction of official business** by any governmental agency.
- 911 tapes
- Anything the ECD staff or board creates is a public record.
- There are a number of exceptions, including unlisted phone numbers contained on 911 tapes.

Public Records Policies

- Your ECD should have policies regarding how to handle public records requests, especially if you run PSAPs.
- Each PSAP should have a person designated as the records custodian and there should be a backup person assigned.
- The policy should cover the process for making a request, including the forms to be used, identification required, copying fees, etc.

Responding to an Open Records Request

- Access to records must be granted to any citizen of Tennessee during business hours.
- The custodian may take up to 7 business days to:
 - Provide access to record;
 - Deny in writing access to record with explanation of basis of denial; or
 - Indicate additional time necessary to produce the record.
- The custodian may require the requestor to produce photo identification with an address in order to inspect or to receive copies.

Forms

- The Office of Open Records Counsel has forms available for the following:
 - The Inspection/Duplication of Records Request
 - The Records Request Denial Letter
 - The Records Production Letter
- The Inspection/ Duplication of Records Request form **MUST** be used for all public records requests. You should customize it to conform to your needs.
- The other forms are for your convenience, or you may create your own.
- These forms are located at:
<http://comptroller.state.tn.us/openrecords/forms.htm>

Responding to an Open Records Request

- A custodian may **NOT** require that a request for inspection be in writing but should document the request on the Inspection/Duplication of Records form.
- If the requested record contains confidential information, you must redact (obscure or black out) the confidential information before providing the record.
- The custodian does not have to **create** a record that does not exist.
- Be fair and consistent in implementation. The custodian should always follow the policy.

Fees

- A records custodian may **NOT** charge to VIEW a public record, unless otherwise required by law.
- A custodian may charge and receive upfront payment for copies.
- The Office of Open Records Counsel is responsible for developing a schedule of reasonable charges which should be completed by October 15, 2008.
- Until this schedule has been released, a custodian may charge the actual costs incurred in producing requested material, provided that no charge shall accrue for the first 5 hours of labor.
 - Such actual costs shall include, but not be limited to: making of copies, extracts, phonographs or photostats; and the hourly wage of employees reasonably necessary to produce the requested information.

Contact Office of Open Records Counsel

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<http://www.comptroller.state.tn.us/openrecords>

Federal Legislation

- New and Emerging Technologies (NET) 911 Improvement Act of 2008
- Food and Energy Security Act of 2007 “Farm Bill”

NET 911 Improvement Act of 2008

- Provides liability protection for all technologies-- If the FCC requires any new services to provide 9-1-1 access, PSAPs and service providers are covered by existing state liability laws.
- Confirms state and local authority to impose and collect 9-1-1 fees from VoIP and wireless providers provided fees are used for intended purpose.
- Broadens the eligible use of federal 9-1-1 funds and will allow grant funds to be used for the transition to NG9-1-1, in addition to Phase II wireless E9-1-1.

Farm Bill

- Establishes a loan program to expand or improve the following in rural America:
 - 911 access;
 - Integrated interoperable emergency communications;
 - Homeland security communications;
 - Transportation safety communications; or
 - Location technologies used outside an urban area.

Other Federal Legislation

- The Implementing the 9/11 Commission Recommendations Act of 2007 made clear in statute that federal homeland security grants can be used for the support of PSAPs.
- The House and Senate passed resolutions designating April as National 9-1-1 Education Month to help promote 9-1-1 education nationally.